

House File 645 - Introduced

HOUSE FILE 645

BY STAED

A BILL FOR

- 1 An Act allowing the formation of certain for-profit
- 2 corporations as benefit corporations authorized to do
- 3 business in this state under certain conditions.
- 4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

BENEFIT CORPORATIONS

Section 1. NEW SECTION. 490.1801 Definitions.

As used in this division:

1. "*Benefit corporation*" means a for-profit corporation intended to operate in a responsible and sustainable manner, to produce a public benefit or benefits as set forth in a public benefit provision, and to otherwise operate in a manner that considers the best interests of those materially affected by its conduct.

2. "*Public benefit*" means a positive effect, or reduction of a negative effect, on the environment or on one or more communities or categories of persons or entities, other than shareholders in their capacity as shareholders, of an artistic, charitable, economic, educational, cultural, literary, religious, social, ecological, or scientific nature.

3. "*Public benefit provision*" means a provision in the articles of incorporation that establishes one or more public benefits to be promoted by the corporation.

Sec. 2. NEW SECTION. 490.1802 Name.

1. The name of a benefit corporation shall contain the words "benefit corporation", or the abbreviation "B.C.", or the designation "BC", any of which shall be deemed to satisfy the requirements of section 490.401, subsection 1.

2. Notwithstanding subsection 1, the corporate name of a benefit corporation that is also a professional corporation or foreign professional corporation under chapter 496C shall contain the words "professional benefit corporation" or the abbreviation "P.B.C." or "PBC", any of which shall be deemed to satisfy the requirements of section 490.401, subsection 1.

Sec. 3. NEW SECTION. 490.1803 Certain amendments, mergers, and share exchanges — votes required.

1. Notwithstanding any other provisions of this chapter, a corporation that is not a benefit corporation shall not, without the approval of at least ninety percent of the voting

1 power of each class and series of the outstanding shares of the
2 corporation, in each case whether voting or nonvoting, do any
3 of the following:

4 *a.* Amend its articles of incorporation in accordance with
5 section 490.1003 to include a public benefit provision.

6 *b.* Merge with or into or enter into a share exchange
7 with another entity if, as a result of such merger or share
8 exchange, the shares in such corporation would become, or be
9 converted into or exchanged for the right to receive, shares in
10 a domestic benefit corporation, foreign benefit corporation,
11 or similar corporation.

12 2. Notwithstanding any other provisions of this chapter, a
13 benefit corporation shall not, without the approval of at least
14 two-thirds of the outstanding shares entitled to vote thereon,
15 do any of the following:

16 *a.* Amend or eliminate its public benefit provisions in
17 accordance with section 490.1003.

18 *b.* Merge with or into or agree to any share exchange with
19 any entity, unless no vote of shareholders of the corporation
20 would be required pursuant to section 490.1104, subsection 7.

21 *c.* Become an unincorporated entity by conversion.

22 Sec. 4. NEW SECTION. **490.1804 Stock certificates.**

23 Any stock certificate issued by a benefit corporation
24 shall note conspicuously that the corporation is a benefit
25 corporation.

26 Sec. 5. NEW SECTION. **490.1805 Duties of directors.**

27 1. In managing or directing the management of the
28 business and affairs of the benefit corporation, directors
29 shall consider the public benefit or benefits specified in
30 its articles of incorporation, the best interests of those
31 materially affected by the conduct of the corporation, and the
32 pecuniary interests of the corporation and its shareholders.

33 2. Directors of a benefit corporation shall not have any
34 duty to a person on account of any interest of such person in
35 the public benefit or public benefits specified in the articles

1 of incorporation or on account of any interest materially
2 affected by the conduct of the corporation in such person's
3 capacity as such a beneficiary.

4 3. Unless otherwise provided in the articles of
5 incorporation, any failure to consider the interests of those
6 materially affected by the conduct of the corporation, the
7 public benefit or benefits, or the pecuniary interests of the
8 shareholders shall not constitute an intentional infliction of
9 harm on the corporation or the shareholders for the purposes of
10 section 490.202, subsection 2, paragraph "d", subparagraph (1),
11 subparagraph division (b), or section 490.202, subsection 2,
12 paragraph "e", subparagraph (2).

13 Sec. 6. NEW SECTION. 490.1806 Periodic statements and
14 reports.

15 1. A benefit corporation shall include in every notice of a
16 meeting of shareholders a statement to the effect that it is
17 a benefit corporation.

18 2. A benefit corporation shall, no less than biennially,
19 provide its shareholders with a report addressing the public
20 benefit or benefits specified in the articles of incorporation,
21 and the interests of those materially affected by its conduct.
22 The report shall include all of the following:

23 a. The objectives the board of directors has established to
24 address such public benefit or public benefits and interests.

25 b. The standards the board of directors has adopted to
26 measure the corporation's progress in addressing such public
27 benefit or public benefits and interests.

28 c. Factual information based on those standards regarding
29 the corporation's success in meeting the objectives for
30 addressing such public benefit or public benefits and
31 interests.

32 d. An assessment of the corporation's success in meeting
33 the objectives and addressing such public benefit or public
34 benefits and interests.

35 3. The articles of incorporation of a benefit corporation

1 may require that the corporation do any of the following:

2 *a.* Provide its report more frequently than biennially.

3 *b.* Make the report described in subsection 2 available to
4 the public.

5 *c.* Use a third-party standard in connection with or
6 attain a periodic third-party certification addressing the
7 public benefit or public benefits identified in the public
8 benefit provision in the articles of incorporation or the best
9 interests of those materially affected by the corporation's
10 conduct.

11 Sec. 7. NEW SECTION. **490.1807 Derivative suits.**

12 1. In any derivative suit instituted by a shareholder of a
13 benefit corporation to enforce the public benefit requirements
14 set forth in section 490.1805, subsection 1, the complaint must
15 state all of the following:

16 *a.* Each plaintiff was a shareholder of the corporation at
17 the time the complaint states the directors failed to properly
18 perform their obligations, or that such plaintiff's stock
19 thereafter devolved upon such plaintiff by operation of law,
20 and thereafter remained a shareholder of the corporation until
21 the lawsuit was commenced.

22 *b.* At the time the lawsuit was commenced, the plaintiff
23 individually or the plaintiffs collectively owned at least five
24 percent of any class of the corporation's shares.

25 2. The complaint shall also allege with particularity the
26 efforts, if any, made by the plaintiff to obtain the action the
27 plaintiff desires from the directors or comparable authority
28 and the reasons for the plaintiff's failure to obtain the
29 action or for not making the effort.

30 3. No such derivative suit may be maintained by any
31 plaintiff who fails to continue as a shareholder during the
32 pendency thereof or if the plaintiff individually or the
33 plaintiffs collectively fail to continue to own at least five
34 percent of any class of the corporation's shares.

35 Sec. 8. NEW SECTION. **490.1808 Other business corporations**

1 — application and effect of division.

2 The existence of a provision in this division shall not of
3 itself create an implication that a contrary or different rule
4 of law is applicable to a corporation that is not a benefit
5 corporation. Unless expressly stated otherwise, this division
6 shall not affect a statute or rule of law that is applicable to
7 a corporation that is not a benefit corporation.

8 DIVISION II

9 CONFORMING CHANGES

10 Sec. 9. Section 490.401, Code 2019, is amended by adding the
11 following new subsection:

12 NEW SUBSECTION. 1A. Notwithstanding subsection 1,
13 the corporate name of a corporation that is also a benefit
14 corporation under division XVIII, shall comply with section
15 490.1802.

16 Sec. 10. Section 490.1302, subsection 1, Code 2019, is
17 amended by adding the following new paragraph:

18 NEW PARAGRAPH. g. Consummation of a transaction requiring
19 at least a ninety percent vote under section 490.1803.

20 Sec. 11. Section 496C.5, Code 2019, is amended to read as
21 follows:

22 **496C.5 Corporate name.**

23 1. The corporate name of a professional corporation, the
24 corporate name of a foreign professional corporation or its
25 name as modified for use in this state, and any fictitious name
26 or trade name adopted by a professional corporation or foreign
27 professional corporation shall contain the words "professional
28 corporation" or the abbreviation "P.C." or "PC", and except
29 for the addition of such words or abbreviation, shall be a name
30 which could lawfully be used by a licensed individual or by a
31 partnership of licensed individuals in the practice in this
32 state of a profession which the corporation is authorized to
33 practice.

34 1A. Notwithstanding subsection 1, the corporate name of a
35 professional corporation that is also a benefit corporation

1 under chapter 490, division XVIII, shall comply with section
2 490.1802.

3 2. Each regulating board may by rule or regulation
4 adopt additional requirements as to the corporate names and
5 fictitious or trade names of professional corporations and
6 foreign professional corporations which are authorized to
7 practice a profession which is within the jurisdiction of the
8 regulating board.

EXPLANATION

10 The inclusion of this explanation does not constitute agreement with
11 the explanation's substance by the members of the general assembly.

12 GENERAL. This bill amends the "Iowa Business Corporation
13 Act" codified in Code chapter 490, by creating new division
14 XVIII governing benefit corporations. The bill allows a
15 new business for-profit to either incorporate as a benefit
16 corporation or as an existing corporation to become a benefit
17 corporation. The purpose of a benefit corporation is to
18 operate in a responsible and sustainable manner, that promotes
19 one or more public benefits, and in a manner that considers
20 the best interests of persons materially affected by its
21 conduct (new Code section 490.1801(1)). A public benefit
22 may be of an artistic, charitable, cultural, economic,
23 educational, cultural, literary, religious, social, ecological,
24 or scientific nature (new Code section 490.1801(2)). Both
25 existing Code chapter 490 and the bill's amendments in part
26 creating new division XVIII are based on model legislation
27 prepared by the American bar association.

28 DECLARATION. In order to be regarded as a benefit
29 corporation, the corporation's articles of incorporation
30 (articles) must include a public benefit provision that
31 expressly describes the corporation's public benefit (new
32 Code section 490.1801(3)). Moreover, the corporation's
33 benefit status must be identified in its corporate name (new
34 Code section 490.1802 and amended Code section 490.401).
35 Consequently, a professional corporation which is a benefit

1 corporation must also identify itself as a form of benefit
 2 corporation (new Code section 490.1802 and amended Code section
 3 496C.5). In addition, stock issued by the benefit corporation
 4 must state its benefit status (new Code section 490.1804), as
 5 must any shareholder meeting notice (Code section 490.1806(1)).

6 CHOICE TO FORM AS OR BECOME A BENEFIT ENTITY. A new business
 7 may choose to form as a benefit corporation at the time of
 8 incorporation by declaring so in its articles of incorporation
 9 filed with the secretary of state (new Code section 490.1801(3)
 10 and existing Code section 490.202). An existing corporation
 11 may choose to become a benefit corporation by amending its
 12 filed articles (new Code section 490.1803(1) and existing
 13 Code section 490.1003)). An existing corporation may also
 14 choose to become a benefit corporation by combining through
 15 merger or share exchange with a benefit corporation or similar
 16 foreign public benefit entity (new Code section 490.1803(1)
 17 and existing Code section 490.1104(7)). In any case, at
 18 least 90 percent of the corporation's outstanding voting and
 19 nonvoting shares of each class and series must approve the
 20 choice. Dissenting shareholders are entitled to exercise
 21 ordinary appraisal rights (amended Code section 490.1302(1)).
 22 However, the approval of at least two-thirds (66 2/3 percent)
 23 of a benefit corporation's outstanding shares entitled to vote
 24 on the question is required to amend or eliminate a public
 25 benefit provision from its articles, or to merge with or
 26 agree to a share exchange with a nonbenefit entity (new Code
 27 section 490.1803(2) and existing Code sections 490.1003 and
 28 490.1104(7)).

29 MANAGEMENT. When making a decision affecting the business
 30 affairs of a benefit corporation, its board of directors
 31 must balance three criteria: its public benefit provision,
 32 the best interests of persons materially affected by the
 33 benefit corporation's conduct, and the traditional factor
 34 of its stockholders' pecuniary interests (new Code section
 35 490.1805(1)). A director does not have a duty to account for a

1 business decision that impacts a shareholder as a beneficiary
2 of a corporation's public benefit provision (new Code section
3 490.1805(2)). A director's failure to consider a factor
4 does not constitute an intentional infliction of harm on the
5 corporation or the shareholders, unless otherwise provided in
6 the corporation's articles (new Code section 490.1805(3)).
7 However, at least 5 percent of the corporation's shareholders
8 in any class may institute a derivative suit to enforce
9 compliance with the corporation's public benefit provision, in
10 part by alleging that the directors failed to properly perform
11 their duties (new Code section 490.1807 and existing Code
12 chapter division VII, part D).

13 REPORT. A benefit corporation must prepare and deliver
14 a report to shareholders that addresses how its public
15 benefit provision is being promoted and persons materially
16 affected by the benefit corporation's conduct (new Code
17 section 490.1806(2)). The benefit corporation's directors
18 are responsible for the report's preparation. The benefit
19 corporation's articles may require the involvement by a
20 third party, who may be responsible for certifying how the
21 corporation addressed the public benefit or the best interests
22 of those materially affected by the corporation's conduct.
23 The report is not required to be disclosed to the public, or
24 delivered more frequently than once every two years, unless
25 otherwise specified in the benefit corporation's articles (new
26 Code section 490.1806(3)).

27 APPLICATION. The special designation of a corporation as a
28 benefit corporation does not by itself create an implication
29 that different rules apply to nonbenefit corporations. A
30 specific provision governing a benefit corporation also does
31 not affect any other provision that applies to a nonbenefit
32 corporation unless otherwise expressly stated (new Code section
33 490.1808).